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**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Improving Public Safety Communications in	)	WT Docket No. 02-55
the 800 MHz Band	)	
	)	
Consolidating the 900 MHz Industrial/Land	)	
Transportation and Business Pool Channels	)	

To: The Commission

**REPLY COMMENTS**

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## SUMMARY

The vast majority of commenters in response to the latest supplement to the Nextel plan represent their own “consensus” – one in opposition to the Nextel plan. These commenters’ unified position is that the Nextel plan, even as supplemented, remains fundamentally flawed, ineffective and unworkable. Moreover, the Nextel plan is misleading and unduly benefits only one party – Nextel. Most importantly, the plan fails to eliminate interference to public safety systems, does not avoid undue disruption of incumbent licensee operations, and is not spectrum neutral. While the plan does provide public safety a marginal amount of additional spectrum, it is only a fraction of what could be made available pursuant to other less disruptive plans, notably the 700 MHz Solution.

Other elements of the Nextel plan similarly render it deficient. The costs to implement the plan appear to be significantly understated, particularly with respect to public safety equipment replacement costs. A correct replacement figure could amount to \$2.3-\$3 billion – more than three times the funding that the Nextel plan would allocate for public safety. Moreover, the funding proposal includes unacceptable contingencies and an artificial cap that will freeze relocation efforts midstream if funding evaporates. The plan also continues to raise serious problems with respect to border areas, and the proposed RCC is illegal and unworkable.

Nextel’s multi-page attack against the cellular industry is simply an attempt to divert attention away from the fact that it is largely responsible for creating the interference problem and it stands to benefit the most from its proposed “solution.” While there have been instances of cellular interference, those instances nearly always occur in conjunction with Nextel operations and carriers have mitigated, and will continue to mitigate, these instances of interference. It is also clear that when cellular carriers are involved, it is usually due to the wide front-end of the public safety receiver – a problem for which the Nextel plan offers no solution.

Many of those commenters opposing the Nextel plan support the use of technical solutions at the local level that take into account regional differences, including unique border concerns. Commenters support these efforts as a short-term solution, including the enforcement by the FCC of existing rules and codification of the *Best Practices Guide*. The Commission should bolster these local market-based solutions by expressly approving the use of private market agreements, such as frequency swaps, to reduce interference to public safety. In the long-term, the 700 MHz Solution remains the only plan that will eliminate interference to public safety operations. There has been no evidence submitted that the 700 MHz Solution would not work and would not solve interference. The only real complaint is that it requires legislation – as does the Nextel plan.

Notwithstanding record evidence demonstrating problems associated with rebanding alone and the Nextel plan in particular, if the Commission elects to pursue rebanding, it can do so according to the Nextel plan without involving the 700 MHz, 900 MHz and 1.9 GHz bands. These other bands are included for the sole purpose of facilitating a spectrum grab by Nextel; they are unrelated to the problem and the real solution. Any such rebanding, however, could only go forward if the issues raised by Southern LINC have been appropriately resolved.

Accordingly, Commenters recommend that the Commission, after taking steps to address interference concerns in the short-term, designate an independent consultant to look into the nature of the interference problem and recommend alternative solutions. The Commission should then take these options and issue a further notice of proposed rulemaking setting forth actual technical and rebanding proposals for comment that do not unduly benefit one entity.

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To: The Commission

**REPLY COMMENTS**

ALLTEL Communications, Inc., AT&T Wireless Services, Inc., Cingular Wireless LLC, Sprint Corporation, Southern LINC, and United States Cellular Corporation (collectively, “Commenters”) hereby reply to the comments submitted in response to the supplemented 800 MHz rebanding plan submitted by Nextel Communications, Inc. (“Nextel”) and others on December 24, 2002 (“Nextel plan”).<sup>1</sup>

The vast majority of commenters constitute the true “consensus,” which opposes the Nextel plan as supplemented. These commenters’ unified theme is that the Nextel plan, even as supplemented, remains fundamentally flawed, ineffective and unworkable. The Commission can adequately address immediate interference concerns through codification of the *Best Practices Guide* and by expressly permitting the use of private market agreements conditioned on resolving interference to public safety. In the long-term, the Commission should seek

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<sup>1</sup> See *Public Notice*, “Wireless Telecommunications Bureau Seeks Comment on ‘Supplemental Comments of the Consensus Parties’ Filed in the 800 MHz Public Safety Interference Proceeding,” DA 03-19 (rel. Jan. 3, 2003) (“*Notice*”); *Order Extending Time for Filing Comments*, DA 03-163 (rel. Jan. 16, 2003).

legislative authority for, and adopt rules and policies to implement, the 700 MHz Solution. If, however, the Commission chooses to disregard the significant practical and legal problems inherent in the Nextel plan and pursue a rebanding solution, it can do so only *without* involving the 700 MHz, 900 MHz and 1.9 GHz bands. These bands are unrelated to the 800 MHz interference problem and its solution, and are included solely to facilitate a spectrum grab by Nextel. Such rebanding, however, could only go forward where the issues addressed by Southern LINC have been appropriately resolved.

## DISCUSSION

### A. The Nextel Plan Is Not a “Consensus” Plan

The latest round of comments on the Nextel plan makes clear that it “does not represent a true consensus at all.”<sup>2</sup> As one critical infrastructure licensee states, the Nextel plan “absolutely does not represent the vast majority, if any, [of] critical infrastructure licensees, nor has the process . . . been an inclusive one.”<sup>3</sup> A “dramatic number” of parties, including public safety entities, utilities and other critical infrastructure providers, SMR and B/ILT licensees, and cellular providers have opposed or expressed serious reservations concerning the plan.<sup>4</sup>

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<sup>2</sup> Comments of Access Spectrum LLC (“Access Spectrum”) at 2 n.2; *see also* Comments of Blooston, Mordkofsky, Dickens, Duffy & Prendergast (“Blooston”) at 1-2; Carolina Power & Light Company (“Carolina”) at 2, 7; Cinergy Corporation (“Cinergy”) at 5; Consumers Energy Company (“Consumers Energy”) at 2 n.3; Duquesne Light Company (“Duquesne Light”) at 1-2; East Bay Municipal Utility District (“East Bay”) at 2 n.2; Entergy Corporation & Entergy Services, Inc. (“Entergy”) at 2 n.2; Harbor Wireless, LLC (“Harbor”) at 2 n.3; Communications Division, Michigan Department of Information Technology (“State of Michigan”) at 2; Mobile Relay Associates (“Mobile Relay”) at 3; Small Business in Telecommunications (“SBT”) at 2; Southern LINC at 3; United Telecom Council and the Edison Electric Institute (“UTC/EEI”) at 2; Wireless Communications Association International, Inc. (“WCA”) at 1 n.2.

<sup>3</sup> Comments of Carolina at 7; *see also* Comments of Duquesne Light at 1-2 (criticizing the “lack of consideration of critical infrastructure communications” in the Nextel plan).

<sup>4</sup> *See, e.g.*, Comments of Access Spectrum at 20; ALLTEL Communications, Inc. (“ALLTEL”) *et al.* at 1; Alliant Energy (“Alliant”) at 2; Ameren Corporation (“Ameren”) at 3; American Electric Power Company, Inc. (“American Electric”) at 2; City of Baltimore at 1, 7; Baltimore Gas & Electric Company (“Baltimore Gas & Electric”) at 2; (continued on next page)

Members of organizations that signed on to the plan have also spoken against its adoption in whole or in part.<sup>5</sup> Indeed, the *Notice* recognizes that the “consensus” designation is self-styled and “does not represent a consensus reached by all parties participating in the WT Docket No. 02-55 proceeding.”<sup>6</sup> As one commenter aptly notes, rather than a “consensus” plan, the Nextel plan represents “a backroom deal” that will benefit a few “under the guise of solving a public safety interference problem.”<sup>7</sup>

**B. Even As Supplemented, the Nextel Plan Does Not Achieve the Goals of This Proceeding**

It is evident from the record that the Nextel plan does not achieve the public interest goals in this proceeding. Most importantly, the record clearly demonstrates that the plan fails to

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Electric”) at 1; Blooston at 1, 4; Boeing Company (“Boeing”) at 2; Border Area Coalition at 4; Carolina at 2, 7; Cinergy at 5; Duquesne Light at 1-2; Electrocom, Inc. (“Electrocom”) at 12; Entergy at 31; Gainesville Regional Utilities (“Gainesville”) at 2; Harbor at 3; Mid American Energy (“MidAmerican”) at 1; Mobile Relay at 1, 18; National Association of Manufacturers and MRFAC, Inc. (“NAM/MRFAC”) at 4; National Rural Electric Cooperative Association (“NRECA”) at 2; Palomar Communications, Inc. (“Palomar”) at 9; City of Philadelphia at 1-7; Preferred Communication Systems, Inc. (“Preferred”) at 1; Public Safety Improvement Coalition at i-ii, 14; City and County of San Diego (“San Diego”) at i; SBT at 2-3; Southern LINC at 2; UTC/EEI at 2; UTAM, Inc. (“UTAM”) at 1; WCA at 2; Xcel Energy Services, Inc. at 2. Accordingly to Southern LINC, at least 33 public safety entities, 15 utilities and other critical infrastructure licensees, 8 B/ILT licensees, many SMR licensees, and nearly every CMRS carrier other than Nextel have opposed the Nextel plan. *See* Comments of Southern LINC at 3.

<sup>5</sup> *See, e.g.*, Comments of American Electric at 2-3 (noting that the Industrial Telecommunications Association signed on to the Nextel plan “without the explicit support of many if not most of [ITA’s] affected members”); Cinergy at 5 (“Nextel has obtained the support of several trade associations but, significantly, it has not secured the approval of a large number of their constituents, who hold the actual licenses. Particularly notable . . . is the fact that hundreds of individual licensees filed comments, *including many public safety licensees*, expressing divergent positions, often differing from the positions taken by their national trade organizations.”) (emphasis in original); Entergy at 4 (noting that while the majority of the Nextel plan’s signatories are trade associations, “*membership* of these organizations appears to be divided as to the efficacy and advisability” of the plan) (emphasis in original); Mobile Relay at 8 (“To repeat, the presence of AMTA in the Nextel Group is a red herring . . . . AMTA is not the voice of non-Nextel SMR licensees in this proceeding.”).

<sup>6</sup> *Notice* at n.3.

<sup>7</sup> Comments of American Electric at 4; *see also* Comments of SBT at 3 (describing the Nextel plan as “a brokered deal among its signatories, produced in private meetings without input from the Commission, non-members or the public”); UTC/EEI at 2 (provisions of the Nextel plan “were negotiated secretly, without input from most of the user group associations on which their members rely”).

eliminate interference to public safety systems.<sup>8</sup> This is due in large part to the fact that the Nextel plan essentially ignores the effect that public safety equipment has on receiver overload and intermodulation interference, thus not curing the underlying problem.<sup>9</sup> This begs the question asked by the State of Michigan: “[i]f interference will exist after the planned realignment, is the [Nextel plan] truly the best approach?”<sup>10</sup>

The Nextel plan also does not avoid undue disruption of incumbent licensee operations.<sup>11</sup> To the contrary, the plan is both complicated and resource intensive, involving over 2,500 licensees and 26 different deadlines that will take a minimum of nearly 4 years (if not more) to complete.<sup>12</sup> Such a “costly and disruptive solution” is particularly unwarranted given that the scope of the problem, while in need of a solution, is neither nationwide nor as pervasive as some have suggested.<sup>13</sup> It bears noting that substantial progress in implementing the 700 MHz Solution could be achieved in the same time frame.

The Nextel plan is also not spectrum neutral.<sup>14</sup> It needs to be seen for what it really is – a self-serving attempt to grab spectrum by Nextel.<sup>15</sup> The 700 MHz<sup>16</sup> and the 900 MHz<sup>17</sup> portions

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<sup>8</sup> See, e.g., Comments of Boeing at 3; CTIA at 5-6, 11-12; Cinergy at 7; State of Michigan at 6; NRECA at 2, 6; Preferred at 2-3; Verizon Wireless at 2; see also September 23, 2002 Comments of ALLTEL *et al.* at 5-7.

<sup>9</sup> See, e.g., Comments of ALLTEL *et al.* at 3-5; Verizon Wireless at 3-7.

<sup>10</sup> Comments of the State of Michigan at 6; see also Comments of NRECA at 2.

<sup>11</sup> See, e.g., Comments of Access Spectrum at 2; Alliant at 1; City of Baltimore at 1; Blooston at 2; Boeing at 14, 22; Cinergy at 3; Consumers Energy at 4-5; Entergy at 30; NAM/MRFAC at 3, 7-8; Preferred at 2; Southern LINC at 2; see also September 23, 2002 Comments of ALLTEL *et al.* at 7-8.

<sup>12</sup> See Comments of CTIA at 5-6; see also Comments of Entergy at 3; Mobile Relay at 8; NRECA at 2, 3-6; Southern LINC at 2; UTC/EEI at 8.

<sup>13</sup> See, e.g., Comments of Access Spectrum at 2, 5-7; Alliant at 1-2 & Att. at 1; City of Baltimore at 2.

<sup>14</sup> See Comments of ALLTEL *et al.* at 19; NAM/MRFAC at 3; see also September 23, 2002 Comments of ALLTEL *et al.* at 4-5 n.10, 12-17.



of the plan are superfluous, as is the 1.9 GHz band.<sup>18</sup> None of this spectrum is necessary to resolve interference to public safety.<sup>19</sup> In fact, the inclusion of 900 MHz spectrum could cause interference problems to critical infrastructure providers and other users of the 900 MHz band.<sup>20</sup>

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<sup>15</sup> See Comments of ALLTEL *et al.* at 5-10; *see also, e.g.*, Comments of Alliant at 2 (the plan affords Nextel “an unfair advantage”) & Att. at 3; American Electric at 8 (“Nextel would benefit” at the expense of others); Boeing at 16 (the Nextel plan “runs afoul of . . . the Commission’s policy of competitive neutrality”); CTIA at 4 (describing the “unfair advantage” afforded to some under the Nextel plan); Cinergy at 3 (the Nextel plan provides a “disproportionate benefit for a select few”); Consumers Energy at 2 (describing the Nextel plan as “inequitable” and “self-serving”); MidAmerican at 1 (the proceeding is “slanted toward Nextel”); Mobile Relay at 8-9 (“Nextel has been attempting all along to use this proceeding as a vehicle to wheedle unfair competitive advantage . . .”); *id.* at 10 (the Nextel plan represents “a crass effort by Nextel to force all others off potentially cellularized spectrum and horde all such spectrum for itself without having to buy it”); Palomar at 2 (“After reading the [Nextel plan], it is apparent that the primary objective is for Nextel to acquire the 1.9 GHz band in exchange for less desirable spectrum at the least expensive means possible. The [Nextel plan] creates the necessary confusion to conceal this fact.”); Preferred at 11-13 (discussing how the Nextel plan as supplemented unfairly favors Nextel with new spectrum); Verizon Wireless at 12 (Nextel’s request “is a spectrum grab, plain and simple”); *see also, e.g.*, Comments of Access Spectrum at 11-18; American Electric at 8; Cinergy at 49 n.140; NRECA at 11; Southern LINC at 2.

<sup>16</sup> Nextel states that it is offering the 700 MHz spectrum for public safety use, but this spectrum is not nationwide, is a guard band subject to interference, and is limited by statute to commercial use and by FCC regulatory restrictions – cellular architecture is not allowed and Nextel is required to lease 50% of its capacity. *See* Comments of Access Spectrum at 16 & n.35; Palomar at 3; Verizon Wireless at 14; WCA at 7. Given the risk of interference from commercial operations, this guard band spectrum is inappropriate for public safety operations. *See* Comments of Access Spectrum at 16 & n.35 (citing *Service Rules for the 746-764 and 776-794 MHz Bands*, 15 F.C.C.R. 5299 (2000)).

<sup>17</sup> For example, the proffered role of the non-nationwide, noncontiguous 900 MHz spectrum is to provide a location for B/ILT relocation, but such relocation is voluntary and unlikely to occur given the limited availability of 900 MHz equipment and differing bandwidth denominators. *See* Comments of Alliant at 2; UTC/EEI at 12. Moreover, private wireless’ costs to relocate to 900 MHz are estimated to exceed what is covered under the Nextel plan, and the spectrum itself is not well-suited to communicate in regions with elevated terrain. *See* Comments of Ameren at 7. Together, these factors render the 900 MHz band spectrum irrelevant to solving 800 MHz interference and nothing more than a red herring by Nextel. *See, e.g.*, Comments of Preferred at 13 (noting that the Nextel plan “makes no viable offer regarding 900 MHz spectrum”).

<sup>18</sup> *See, e.g.*, Comments of Boeing at 17 (“Granting Nextel 1.9 GHz spectrum, which has nothing to do with the 800 MHz interference problem or Public Safety spectrum needs, in this proceeding would clearly constitute arbitrary and capricious action.”); CTIA at 16 (“Th[e] grant of spectrum in the 1.9 GHz band is not necessary to achieve a rebanding of the 800 MHz band to resolve the public safety interference problem.”).

<sup>19</sup> *See* Comments of ALLTEL *et al.* at 8-10; Access Spectrum at 4, 11-12; Boeing at 17; CTIA at 16; Palomar at 2-3; Verizon Wireless at 15; WCA at 5.

<sup>20</sup> *See* 900 MHz Industrial User Group Comments at 1; Electrocom at 6-7; NRECA at 9-10

Finally, while the plan does provide public safety a marginal amount of additional spectrum, it is only a fraction of what could be made available pursuant to other less disruptive plans, notably the 700 MHz Solution.<sup>21</sup> Moreover, particularly in border areas, the Nextel plan fails to mitigate channel shortages.<sup>22</sup>

### **C. Other Elements of the Nextel Plan Render It Unworkable**

Other elements of the Nextel plan similarly render it deficient. As a preliminary matter, the costs to implement the plan are highly suspect and appear to be significantly understated.<sup>23</sup> Notably, the funding estimate was based on the need to replace only 1% of public safety receivers, an exceedingly low number.<sup>24</sup> The comment record indicates that “the total cost would

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<sup>21</sup> See Comments of ALLTEL *et al.* at 19; September 23, 2002 Comments of ALLTEL *et al.* at 22.

<sup>22</sup> See, e.g., Comments of San Diego at 2.

<sup>23</sup> See, e.g., Comments of Ameren at i, 5-6 (noting that the Nextel plan underfunds the costs that would be incurred by private wireless licensees under the plan); American Electric at 6 (same); City of Baltimore at 3-4 (Nextel’s pledge is “insufficient to cover the costs of retuning all Public Safety systems”); Blooston at 5 (“the \$850 million pledged by Nextel is wholly inadequate to fund public safety relocation, much less the relocation of numerous B/ILT and analog SMR systems”); Boeing at 23 (“With regard to non-Public Safety relocation funding, evidence indicates that relocation costs will *overwhelmingly* exceed the proposed funding pool.”) (emphasis in original); Border Area Coalition at 12-13 (funding to retune “will not be sufficient” for all licensees, but especially public safety licensees in light of border area issues); Cinergy at 44-45 (Nextel funding remains “insufficient to cover the costs of relocation” and “seriously underestimate[s]” certain relocation costs); Consumers Energy at 19-20 (it is “questionable whether” funds will be sufficient, and amount identified for non-public safety is “particularly suspect”); Entergy at 23 (funding proposal is “deficient” and “ultimately illusory”); State of Michigan at 3 (cost estimates for frequency realignments are unrealistic and overlook costs of diverting technical personnel); NRECA at 15-17 (Nextel plan does not assure adequate and timely availability of funds for every licensee forced to relocate); Preferred at 8 (Nextel plan “grossly underestimates the costs of relocating public safety licensees, much less SMR and B/ILT licensees”); Public Safety Improvement Coalition at 2 (“[W]e and other public safety and B/ILT licensees . . . remain uncertain whether even the new amount will cover all potential liabilities.”); *id.* at 3 (proposed funding fails to account for special NPSPAC expenses and consulting fees); San Diego at 13 (“[W]e are not convinced that even the new amount is sufficient to accomplish all of the tasks that will draw upon it.”); Verizon Wireless at 10 (“[T]he proposed fund is unlikely to be sufficient to pay for all required relocations.”).

<sup>24</sup> See, e.g., Comments of Con Edison at 18-19 (it is “not true” that funding is sufficient, particularly given unrealistic radio replacement estimates); Mobile Relay at 14 (“[B]y so significantly understating the amount of units that will have to be replaced vs. retuned, the [Nextel plan] has significantly underestimated the costs involved.”); NAM/MRFAC at 5 (same); City of Philadelphia at 3 (contribution for public safety “will result in substantial underfunding” and largely ignores the cost of radio replacement – the “largest cost factor” for many jurisdictions); Public Safety Improvement Coalition at 3 (questioning whether proposed funding “would provide sufficient cushion” for radios that have to be replaced).

increase by \$78 million for each additional one percent (1%) of public safety radios that need to be replaced.”<sup>25</sup> Based on figures provided by Motorola earlier in this proceeding, 30-40% of public safety mobiles may need to be replaced.<sup>26</sup> This would result in a correct replacement figure of \$2.3-\$3 billion<sup>27</sup> – more than three times what the Nextel plan would cover for public safety. Moreover, every element within the Nextel plan has a condition placed on it which can change the entire cost estimate upon which it relies.

The funding proposal itself also has a number of fatal flaws. First, it is contingent upon adoption of the plan as a whole, which is impossible for legal and policy reasons.<sup>28</sup> Second, it contains an artificial cap that will freeze relocation efforts midstream if funding runs out.<sup>29</sup> Third, the underlying contribution itself is voluntary and begins with a mere 3% deposit by Nextel and is collateralized by licenses Nextel does not yet (and may never) hold.<sup>30</sup>

Beyond questions of funding, the Nextel plan also continues to raise serious problems with respect to its feasibility in border areas.<sup>31</sup> According to an analysis conducted by the

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<sup>25</sup> Comments of Preferred at 9 (emphasis added).

<sup>26</sup> *Id.* at 10 (citing Motorola Comments at 25 (May 6, 2002)).

<sup>27</sup> *See id.* at 9.

<sup>28</sup> *See, e.g.,* Comments of ALLTEL *et al.* at 3, 12; American Electric at 16; Boeing at 2, 15-16, 21; Cinergy at 6; Entergy at 3-4; NRECA at 10-11; SBT at 7; Southern LINC at 10-12.

<sup>29</sup> *See, e.g.,* Comments of Alliant at 2 & Att. at 4; ALLTEL *et al.* at 11; City of Baltimore at 4; Blooston at 2-4; Boeing at 23-24; Border Area Coalition at 12-13; Carolina at 9 n.25; CTIA at 9-10; Cinergy at 44; Con Edison at iv, 16, 18-19; Consumers Energy at 19-20; Entergy at 24-25; State of Michigan at 3; City of Philadelphia at 1-2; Public Safety Improvement Coalition at 2; SBT at 6, 21; Southern LINC at 7; Verizon Wireless at 2, 9-10.

<sup>30</sup> *See, e.g.,* Comments of Ameren at 4; City of Baltimore at 3; Boeing at 20-21, 25; CTIA at 8; Harbor at 7-8; NRECA at 15-16; City of Philadelphia at 4-5; Public Safety Improvement Coalition at 5.

<sup>31</sup> *See, e.g.,* Comments of American Electric at 15-16; Boeing at 2, 3-15; Consumers Energy at 6-12; Palomar at 4-7; Peak Relay, Inc. (“Peak”) at 4.

coalition representing border area licensees, the Nextel plan “does not offer a viable solution for any of the areas studied without significant modification (usually involving renegotiation of bilateral agreements).”<sup>32</sup> The coalition therefore concludes the Nextel plan “*will not work as proposed and should be rejected.*”<sup>33</sup>

Lastly, the proposed Relocation Coordination Committee (“RCC”) is illegal and contains so many infirmities as to make the plan unworkable.<sup>34</sup> For example: (i) creation of the RCC would violate several statutes and is an impermissible subdelegation of authority; (ii) the RCC’s private-sector composition hampers its ability to operate in the public interest; (iii) the RCC would lack oversight, transparency and accountability; (iv) the RCC would eliminate licensee control over applications and would constitute a frequency coordination monopoly; (v) composition of the RCC would not be representative of all licensees in the 800 MHz band; (vii)

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<sup>32</sup> Comments of Border Area Coalition at 3.

<sup>33</sup> Comments of Border Area Coalition at 4 (emphasis in original).

<sup>34</sup> See, e.g., Comments of Alliant at 2 (questioning the precedent of having a for-profit entity – Nextel – involved in administering public policy); Ameren at 12 (opposing the breadth of powers afforded the RCC over license applications of other entities); American Electric at 12-13 (objecting to Nextel’s influence over the RCC and the ability of the RCC to file applications on behalf of licensees without their input); City of Baltimore at 6 (stating that it is a conflict of interest for Nextel to be a member of the committee responsible for forming the panel to arbitrate disputes); Boeing at 24 (expressing concern regarding the “apparently limitless discretion” of the RCC and its inequitable composition); Carolina at 7 (the RCC would unlawfully afford “virtually unreviewable power” to the same underrepresented group that forged the Nextel plan); CTIA at 6 (questioning whether the RCC can legally conduct arbitration on behalf of the FCC); Cinergy at 16, 29 (FCC cannot lawfully delegate policymaking authority to the RCC, and the administration of the RCC violates due process); Con Edison at 12 (RCC is “Illegal” and “Bad Policy”); Consumers Energy at 23-26 (same); Entergy at 12-20, 30 (unchecked power of RCC would violate the Communications Act, the Administrative Procedure Act (“APA”), and Federal Advisory Committee Act, and due process); Mobile Relay at 15-16 (membership on the proposed RCC is automatically stacked against existing non-Nextel SMR licensees); NAM/MRFAC at 6, 12-14 (questioning Nextel’s role on the RCC and its sweeping authority to make decisions for individual licensees without their approval); City of Philadelphia at 5-7 (public safety is inadequately represented on the RCC); Preferred at 13-14 (describing the arbitration panel run by the RCC as a “stacked deck”); Public Safety Improvement Coalition at 7, 9 (RCC is unbalanced and lacks adequate agency oversight); SBT at 23-29 (questioning the extra-legal nature of the RCC, the lack of adequate checks and balances, and its ability to prepare and prosecute the applications of licensees without their approval); UTC/EEI at 8-10 (RCC is unbalanced and would usurp agency responsibilities, and requirement to divulge sensitive site data raises Homeland Security issues); Xcel at 8-9 (FCC lacks authority to delegate reconfiguration of the 800 MHz band to the RCC, over which Nextel would have *de facto* control).

the RCC's establishment of the arbitration panel, and payment of arbitration expenses, renders the arbitration process biased; (viii) the requirement to divulge sensitive confidential information to the RCC, of which Nextel is a member, is anticompetitive; and (ix) there is no method for appealing decisions of the RCC, violating the APA and placing the RCC essentially "above the law."<sup>35</sup>

#### **D. Nextel's Diatribe Against Cellular Carriers Is Another Smoke Screen**

Nextel's multi-page attack against the cellular industry is simply an attempt to divert attention away from the fact that it is largely responsible for creating the interference problem and it stands to benefit the most from its proposed "solution."<sup>36</sup> Cellular carriers and others have demonstrated that Nextel is the primary cause of interference to public safety,<sup>37</sup> a fact repeated in the current pleading cycle.<sup>38</sup> While there have been instances of cellular interference to public safety, those instances nearly always occur *in conjunction with Nextel operations* and carriers

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<sup>35</sup> See Comments of Southern LINC at 12-34.

<sup>36</sup> See Comments of Nextel at 6-11.

<sup>37</sup> See August 7, 2002 Reply Comments of ALLTEL *et al.* at 3-4 & n.11 (summarizing comment record).

<sup>38</sup> See, e.g., Comments of ALLTEL *et al.* at 5 ("Nextel is the predominant causer of interference to public safety . . ."); Access Spectrum at 1, 12, 17 (Nextel is "*the primary source of 800 MHz interference*") (emphasis in original); Alliant, Att. at 1 (interference to public safety is "primarily caused" by Nextel's systems); Carolina at 4 ("interference problems [in the 800 MHz band] . . . have been created by Nextel"); Cinergy at 5 (Nextel is "primarily responsible" for the 800 MHz interference problem); Consumers Energy at 6 (describing interference to public safety at 800 MHz as a problem *Nextel* created); Entergy at 4 (interference to public safety in the 800 MHz band "appears to be primarily caused by Nextel"); NAM/MRFAC at 4 (describing 800 MHz interference as "the Nextel interference problem"); NRECA at 11 (Nextel is "the major source of interference in the 800 MHz band"); Preferred at 5 n.7 (Nextel is "the primary cause of today's interference" and as such is "responsible for the problems which led to this proceeding"); Verizon Wireless at 3 (Nextel "is the cause of the vast majority of the interference problems experienced by public safety licensees"); Xcel at 5 ("One of the few issues on which the parties to this matter, including Nextel, agree is that Nextel's operations are a chief cause of interference to Public Safety operations at 800 MHz.").

have mitigated, and continue to mitigate, these interference instances.<sup>39</sup> It is also clear that when cellular carriers are involved, it is usually a direct result of the wide front-end of the public safety receiver – a fundamental problem for which the Nextel plan offers no solution. Unfortunately, experience in mitigating interference also shows that new public safety receivers do not have much better rejection capabilities and some of the newest radios have actually exhibited worse performance. However, this experience does confirm that use of *Best Practices* does work, and that cellular carriers, and Nextel, have been responsive to interference incidences and are addressing them.<sup>40</sup>

**E. Those Opposed to the Nextel Plan Support *Best Practices* and Use of Private Market Agreements**

Many of those commenters opposing the Nextel plan, in whole or in part, instead support the use of technical solutions at the local level that take into account regional differences, including unique border concerns.<sup>41</sup> Critical to this effort is the enforcement by the FCC of existing rules and codification of the *Best Practices Guide*.<sup>42</sup> The Commission should bolster

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<sup>39</sup> See, e.g., Comments of Con Edison at iv (“The record does not support the notion that cellular architecture *per se* causes interference. Instead, there seems to be general agreement that *Nextel’s use of its cellular architecture* causes interference.”) (emphasis in original).

<sup>40</sup> See Comments of CTIA at 12 (“The efforts of Nextel and the cellular carriers to solve the interference problems identified by Public Safety organizations demonstrate that case-by-case mitigation efforts can have a significant positive impact to address interference incidents as a near-term measure. Experience has shown that utilization of best practices and coordination efforts can mitigate the vast majority of the interference problems.”); Consumers Energy at 4 (noting that “[i]n virtually every case that was not caused by the use of an unlicensed frequency, technical solutions have solved the problem.”).

<sup>41</sup> See, e.g., Comments of Access Spectrum at 3, 8-9; Alliant at 2 & Att. at 1; Ameren at 14; American Electric at 17; City of Baltimore at 2; Blooston at 2; Boeing at 14; CTIA at 12-13; Cinergy at 6-8; Con Edison at 8; Consumers Energy at 4; Entergy at 2-3; MidAmerican at 1; NRECA at 2, 6-7; Southern LINC at 3-4; UTAM at 3; Verizon Wireless at 9.

<sup>42</sup> See, e.g., Comments of Access Spectrum at 3, 8-9; Alliant at 2 & Att. at 1; ALLTEL *et al.* at 18; City of Baltimore at 2; Border Area Coalition at 19-20; CTIA at 12; Cinergy at 6; Con Edison at 8; Southern LINC at 5; Verizon Wireless at 7-8 & n.11. The Nextel plan fails to justify moving away from the cooperative approach to (continued on next page)

these local market-based solutions by expressly approving the use of private market agreements by Nextel and others, such as frequency swaps, conditioned on reducing interference to public safety.<sup>43</sup> As Con Edison notes, “[b]y providing parties with flexibility to resolve their interference problems, the parties can address the problems in the most efficient manner.”<sup>44</sup> Moreover, by addressing interference problems through technical solutions, licensees “will develop new and even more effective ways to address interference.”<sup>45</sup>

**F. The 700 MHz Solution Remains the Only Long-Term Solution that Will Eliminate Interference to Public Safety Operations, Without Misleading the FCC or Unduly Benefiting Any Party**

Commenters have highlighted above and in prior filings that the Nextel plan is simply a guise for Nextel to gain access to nationwide contiguous spectrum; it is using the interference problems that it is primarily causing to public safety as the linchpin for this brazen attempt. The Nextel plan goes beyond making Nextel “whole.” In this regard, Commenters must address Nextel’s statement that CMRS carriers’ opposition to the Nextel plan “can only be seen as an anti-competitive attempt to burden Nextel and other Land Mobile Radio band licensees with the continuing burden and disruption involved in managing increasing levels of interference caused by an outdated band plan. Sadly, this opposition comes at the expense of emergency first-responders and other public safety personnel . . . [and] it is time for the Commission to act in the public interest, and reject the self-interested efforts of Nextel’s competitors to delay effective

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interference resolution outlined in the *Best Practice Guide*. See, e.g., Comments of ALLTEL *et al.* at 14-17; CTIA at 13 n.27; Verizon Wireless at 7 n.11.

<sup>43</sup> See, e.g., Comments of Alliant at 2 & Att. at 1; ALLTEL *et al.* at 18; American Electric at 17; Cinergy at 6; Entergy at 3, 30; Southern LINC at 4; UTC/EEI at 3, 5; Verizon Wireless at 15; Xcel at 10.

<sup>44</sup> Comments of Con Edison at 8.

<sup>45</sup> *Id.*

action.”<sup>46</sup> This statement by Nextel is unfounded and patently self-serving. It is the Nextel plan, in fact, that will delay resolution of the interference problem. As one critical infrastructure provider notes:

[G]iven the constant drum beat of the [Nextel coalition] about how urgent the problems are – so urgent they say that there isn’t time to consider technical resolution other than through rebanding – it is sadly ironic how willing they appear to be [to] put the implementation of real interference safeguards off so far into the distant future.<sup>47</sup>

CMRS carriers have long been on the record proposing plans, such as the 700 MHz Solution, that would resolve interference to public safety without misleading the FCC with a shrouded attempt to gain additional spectrum and an enhanced spectrum position.<sup>48</sup> Quite simply, the interference that is being experienced by public safety will not be resolved by the Nextel plan, and the problem will continue in perpetuity, unless the parties do what is right and implement a solution that will work – the 700 MHz Solution. There has been no evidence submitted that the 700 MHz Solution would not work and would not solve interference. The only real complaint is that it requires legislation – which the Nextel plan does as well.<sup>49</sup>

The unfortunate reality is that Nextel has confused “public” interest with “Nextel” interest.<sup>50</sup> Instead of a self-serving plan, the CMRS carriers have proposed a solution that

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<sup>46</sup> Comments of Nextel at 11.

<sup>47</sup> Comments of Carolina at 9-10.

<sup>48</sup> See, e.g., May 6, 2002 Comments of Cingular Wireless LLC (“Cingular”) and ALLTEL at 16-20; September 23, 2002 Comments of ALLTEL *et al.* at 19-23; Comments of CTIA at 14-15.

<sup>49</sup> See September 23, 2002 Comments of ALLTEL *et al.* at 20-21; Comments of Access Spectrum at 15-16 & n.35.

<sup>50</sup> See Comments of Southern LINC at 4 (the Commission must “advance the *public* interest, not just the private business interests of a select few,” *i.e.*, Nextel).



resolves interference in the long-run, not a “quick” and expensive fix that perpetuates interference into the foreseeable future. The 700 MHz Solution resolves interference<sup>51</sup> and does not enhance anyone’s spectrum position – with the notable exception of public safety, for which an additional 20.5 MHz of spectrum is provided.<sup>52</sup> In fact, the 700 MHz Solution proposes to take spectrum away that is designated for CMRS services.<sup>53</sup> Thus, unlike the Nextel plan, this proposal is not self-serving.

**G. Nextel’s Rebanding Plan Can Be Accomplished Without Involving the 700 MHz, 900 MHz and 1.9 GHz Bands**

Notwithstanding record evidence demonstrating the practical and legal problems associated with rebanding alone and the Nextel plan in particular, if the Commission elects to pursue rebanding, it can do so according to the Nextel plan without involving the 700 MHz, 900 MHz and 1.9 GHz bands.<sup>54</sup> As noted above, the inclusion of these other bands is extraneous to the problem as well as the solution; these bands are included by Nextel solely to justify its spectrum grab.

There are a number of 800 MHz rebanding plans that have been introduced in the record that do not involve other bands. These proposals appear to be much more workable and simpler to implement than does the Nextel plan and demonstrate that rebanding can work without the

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<sup>51</sup> See September 23, 2002 Comments of ALLTEL *et al.* at 22; August 7, 2002 Reply Comments of ALLTEL *et al.* at 15-18; *see also* Comments of Boeing at 27 (advocating the relocation of public safety to the upper 700 MHz band as “an excellent, long-term, and comprehensive solution”); NAM/MRFAC at 2 n.3 (“NAM/MRFAC have consistently urged that the best long-term solution would include the use of 700 MHz spectrum as a relocation option.”); Southern LINC at 4 (relocation of public safety to the upper 700 MHz band will “eliminate interference in the long term to 800 MHz public safety licensees”).

<sup>52</sup> See May 6, 2002 Comments of Cingular and ALLTEL at 18; Comments of Southern LINC at 4.

<sup>53</sup> See May 6, 2002 Comments of Cingular and ALLTEL at 18.

<sup>54</sup> See, *e.g.*, Comments of CTIA at 13; Cinergy at 7; Palomar at 2-3; Verizon Wireless at 15; WCA at 5-6.

involving other bands. Any rebanding, however, would necessitate that the Commission provide Southern LINC, and other similarly situated carriers, with the same type of contiguous spectrum to be afforded to Nextel, subject to the same operational rules, to create regulatory parity.<sup>55</sup>

Accordingly, Commenters recommend that the Commission, after taking the steps identified above in Section E to address interference concerns in the short-term, proceed as follows. First, the Commission should designate an independent consultant to look into the nature and extent of the interference problem, collect relevant facts, and develop options to fix the problem – including technical and rebanding solutions.<sup>56</sup> The Commission should then take these options and issue a further notice of proposed rulemaking setting forth actual technical and rebanding proposals for comment.

It is premature to issue an order in this proceeding without seeking further comment on the scope of any proposed rules.<sup>57</sup> Given the ever-changing mosaic that is called the Nextel plan, as well as the variety of alternative plans that continue to be proposed, the terms of any proposed rules at this stage are not sufficiently clear to commenting parties as is required by the APA and the Commission’s rules.<sup>58</sup> Rather than lengthening the time for resolving the issue, such an

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<sup>55</sup> See Comments of Southern LINC at 34-39.

<sup>56</sup> See, e.g., Comments of Boeing at 27 (suggesting the creation of an “expert rebanding team” that would “fully and impartially examine the [800 MHz interference problem] and the available options or generate new options”); Cinergy at 2 (“Cinergy has consistently recommended that the FCC conduct further investigation into the source and scope of the interference problem. After the FCC better understands the nature and extent of the problem, it could implement technical and market-based solutions in accordance with its existing interference mitigation rules and . . . rebanding [if] necessary . . . .”); Entergy at 2-3 (recommending an “investigation into the scope and prevalence of the problem, so that the FCC may adopt rule changes to facilitate market-based and technical solutions).

<sup>57</sup> See Comments of Blooston at 7-8 n.4; SBT at 15-16; UTC/EEI at 2-3.

<sup>58</sup> See 5 U.S.C. §553(b)(3); 47 C.F.R. § 1.413(c). The present *Notice* is more in the nature of a notice of inquiry seeking suggestions as to how to proceed than a proposal “sufficiently specific to alert interested parties to (continued on next page)

approach would actually shorten the period of time to implement a permanent solution as litigation would be minimized.

## CONCLUSION

For the foregoing reasons, and as stated by comments in earlier rounds of this proceeding, the Commission should reject the Nextel plan. The Commission should immediately act to adopt an order (i) codifying the requirements set forth in the *Best Practices Guide* and (ii) expressly permitting the use of private market agreements conditioned on resolving interference to public safety. To eliminate interference to public safety in the long-term, the Commission should seek legislative authority for, and adopt rules and policies to implement, the 700 MHz Solution. If the Commission nevertheless seeks to pursue 800 MHz rebanding alone, it can do so according to the Nextel plan without involving the 700 MHz, 900 MHz and 1.9 GHz bands. These other bands are included for the sole purpose of facilitating a spectrum grab by Nextel; they are unrelated to the problem and the real solution. Accordingly, after properly addressing immediate interference concerns, the Commission should issue a further notice of proposed rulemaking setting forth actual technical and rebanding solutions developed by an independent consultant.

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the substance of [the FCC's] proposal and to provide an adequate opportunity for comment on those proposals.” *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, 9 F.C.C.R. 6858, ¶ 35 (1994).

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